

ESTATE OF CYRIL DEWEY BOCKIUS

Decided July 19, 1973

IA-T-26

Indians: Probate--Indian Probate: Wills: Undue Influence: Established

A will drafted on instructions of a person standing in a confidential relationship with the decedent will be disapproved because of undue influence when the decedent had no opportunity for independent advice from a person in a position to advise impartially and confidentially.

United States
Department of The Interior
Office of The Solicitor
Tulsa Region
P. O. Box 3156
Tulsa, Oklahoma 74101

IA-T-26

July 19, 1973

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| Estate of | : | Appeal from action of the |
| Cyril Dewey Bockius | : | Superintendent of the Osage |
| Deceased Osage | : | Agency disapproving a will |
| Allottee No. 2106 | : | |
| | : | Affirmed |

APPEAL FROM THE SUPERINTENDENT OF THE OSAGE AGENCY

On May 29, 1973, Gertrude Bockius, acting through counsel, who also was appointed guardian ad litem of her minor son, Craig Joseph McDonald, filed a notice of appeal from the decision of the Superintendent, Osage Agency, Bureau of Indian Affairs, dated May 14, 1973, which disapproved a purported will, dated August 2, 1971, of Cyril Dewey Bockius, deceased Osage allottee No. 2106. The decedent died on September 6, 1971, leaving Osage headright interests valued at \$19,851.36 subject to supervision by the Department of the Interior, and other properties not subject to such supervision. No appeal brief has been filed either on behalf of the appellant, who is the decedent's surviving widow, or on behalf of the appellees, Francis Bailey Bockius, a brother, Mary Beryl Dikeman, a sister, and Billy Guy Bockius, a nephew, who are heirs of the decedent.

In April of 1971 the appellant, who was then about 55 years of age, first met the decedent, who was a childless widower over 70 years

of age. On this occasion, she visited his residence in Bartlesville, Oklahoma, in search of roomers for her home, which also was in Bartlesville. The decedent was in declining health, using a cane in walking to help maintain his equilibrium; he was usually assisted by others in entering and departing from such places as automobiles and buildings.

Appellant took the decedent fishing three times during the following weeks, and the decedent moved into her home in early May of 1971. The record does not reflect the arrangements whereby the decedent was to pay the appellant for his board and room but does indicate that during his residence in her home he paid for some construction materials which were used in a house she was building and paid for electrical work thereon performed by Al McDonald, a former husband of the appellant.

On July 26, 1971, the appellant drove the decedent to Miami, Oklahoma, where they were married. For this purpose they used an automobile owned by a friend of the appellant, who accompanied them. Appellant testified (page 33 of Exhibit 5) that she and the decedent discussed his making a will before they were married.

In an envelope postmarked July 28, 1971, bearing as a return address "Al McDonald, 211 South Virginia, Bartlesville, Okla.," the appellant forwarded the following undated message to the Osage Agency in Pawhuska:

"Osage Indian Agency

Dear Sir:

When a person is wanting to sign their allotment to another person after death is this possible. & if so

what procedures do you go through. Does a person have to put it on the records in Pawhuska.

Al McDonald
211 S. Virginia
Bartlesville, Okla."

The appellant admitted (page 86 of Transcript) that she wrote this letter, explaining that she intended to sign it as "Mrs. Al McDonald," although she was at that time the wife of the decedent. She testified that thereafter she telephoned the Osage Agency and talked with an employee there who "told me to go to my lawyer and tell him uh uh my son's name, that's who it was to be made out to and to write it up in the will that way" (page 97 of Transcript). The appellant also admitted (page 90 of Transcript) that she telephoned someone at Marie's Steakhouse in Bartlesville to obtain the names of the decedent's relatives for insertion in his will.

The appellant went to the office of her attorney, unaccompanied by the decedent whom the attorney had never met, and arranged for him to prepare a will for execution by the decedent, telling the scrivener what the will should state. The scrivener had in previous years represented the appellant in connection with the probate of an estate in which she was the devisee of an unrelated elderly man whom she had "taken care of" prior to his death. Appellant was aware that the decedent had previously used another attorney who drafted a will for him in 1970 because she testified (page 24 of Transcript) that she had accompanied the decedent to his attorney's office to obtain an abstract of title to property owned by the decedent.

On August 2, 1971, the appellant and her daughter, Mrs. Janet Sailor, took the decedent to the office of the scrivener, where the will was executed and witnessed in their presence. The decedent gave the scrivener a check for \$65.00 for preparation of the will and a power of attorney, but the check was returned because of insufficient funds at the bank on which it was drawn, so the appellant testified (page 93 of Transcript) that the decedent "gave me the money and I put some with it and we paid it." The decedent declined to execute the power of attorney, which was made in favor of the appellant, while in the scrivener's office, but on urging by the appellant later that day the decedent executed the power of attorney before a notary public whose office was located outside Bartlesville.

The decedent's death, which was apparently caused by a heart attack, occurred on September 6, 1971. The scrivener thereafter filed a petition for approval of the will on behalf of the appellant, but he subsequently withdrew from representing her and she is now represented by other counsel.

The appellant testified at one time (page 100 of Transcript) that while in the scrivener's office before execution of the will she read the will to the decedent, and at another time (page 26 of Transcript) that they discussed it "casually." Even a casual examination of the document should have disclosed several discrepancies to anyone familiar with the decedent and his family. The decedent's own name, as well as that of all other persons identified in the document as having the same

surname, was spelled "Buckius" instead of "Bockius." The will contained a bequest to an individual identified therein as "Francis Bailey, my half-brother," when the only surviving brother of the decedent was a full brother named Francis Bailey Bockius, one of the appellees herein.

The will made bequests of five dollars each to the three appellees, to three children of the nephew appellee, and to Elsie Slinkard, a friend of the decedent who had been named as a beneficiary in his 1970 will. It gave to the wife, "Gertrude Buckius," a widow's share of the estate. It then gave the residue of the estate, "including Osage Indian Headright and all receipts to be received thereunder," to Craig Joseph McDonald, the minor son of the appellant. It also appointed "my wife, Gertrude Buckius" as Executrix without bond.

As the decedent's wife, the appellant stood in a confidential relationship to him at the time she arranged for the drafting and execution of his will. This brings into effect a long-standing principle of Oklahoma law most recently restated in White v. Palmer, 498 P.2d 1401 (Okla. 1972), in which the court held (at page 1406):

"When the legal presumption of undue influence has arisen by showing confidential relations, whether in dispositions of property inter vivos or by will, the burden of proof is upon the party seeking to take the benefit of such disposition to rebut the presumption attaching thereto by showing either a severance of the confidential relations, or that the party making the disposition had competent and independent advice in regard thereto. Hunter v. Battiest, *supra*. Independent advice has been held to mean the testator had the benefit of conferring fully and privately about the consequences of his intended will with a person who was not only competent on such matters, but who was so disassociated from the interest of the beneficiary named

there as to be in a position to advise with the testator impartially and confidentially. Anderson v. Davis, 208 Okl. 477, 256 P.2d 1099.”

The fact that the appellant caused her son to be named as the residuary beneficiary instead of herself does not alter the fact that she thereby accomplished her own purposes, to the detriment of the decedent’s heirs at law. Undue influence was present because the decedent had no opportunity for independent advice. Accordingly, the Superintendent’s action disapproving the will is affirmed pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (210 DM 2.2A (3)(a), 24 F.R. 1348), 1/ and redelegated to the Regional Solicitor (Solicitor’s Regulation 23, 31 F.R. 4631).

Raymond F. Sanford
Regional Solicitor

1/ The most recent unpublished delegation (Release. No. 1374 dated December 27, 1971) reads:

“.2 Authority in Specified Matters.

A. The Solicitor is authorized to exercise the authority of the Secretary:

...

(3) With respect to the disposition of appeals to the Secretary;

(a) Involving estates of Indians of the Five Civilized Tribes and Osage Indians;"

...

“.3 Authority to Redelegate. The Solicitor may, in writing, redelegate or authorize written redelegation of any authority delegated to him in this chapter. For redelegation is of authority see the Solicitor’s Regulations.”